

### **REMARKS**

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1 - 18 are pending in the present application. Claims 1, 4 and 6 - 8 are amended. Claims 9 - 18 are added by this response. Claims 1 and 10 are independent claims.

### **Provisional Rejection**

Claims 1 - 8 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 - 7 of co-pending Application 11/657,447 ('477) in view of U.S. Patent 5,734,976 to Bartschi ("Bartschi") in view of U.S. Patent Publication 2002/0191806 by Rohrseitz ("Rohrseitz") as applied to claims 1, 2, 4, 5, and 7, in view of U.S. Patent Publication 2008/0095387 by Niederdrank ("Niederdrank") as applied to claims 3 and 8, and in view of Publication WO 99/48330 by Vroenhoven ("Vroenhoven") as applied to claim 6. Insofar as they pertain to the presently pending claims, these rejections are respectfully traversed.

### **Claim 1**

As amended, independent claim 1 pertains to an in-ear communication device that includes "a transmission and reception circuit for transmission and/or reception of electromagnetic energy, the transmission and reception circuit including an antenna for radiating and/or receiving electromagnetic energy the antenna being disposed in relation to the battery such that the antenna has a first surface facing away from the

battery and a second surface facing towards the battery, the antenna and battery further being situated in close proximity to each other such that the battery is an electromagnetic shield between the antenna and other parts of the communication device circuitry, thereby preventing the antenna from becoming de-tuned as a result of variations in the position of the other circuitry in the device."

Applicants respectfully submit that neither '477 nor any of the other references applied or cited teach or suggest locating an antenna in relation to a battery in a communication device "such that the battery is an electromagnetic shield between the antenna and other parts of the communication device circuitry, thereby preventing the antenna from becoming de-tuned as a result of variations in the position of the other circuitry in the device." Applicants therefore submit that the subject matter of independent claim 1 differs significantly from the claimed subject matter of '477 and that none of Bartschi, Rohrseitz, Niederdrank, or Vroenhoven, taken either alone or in combination (assuming the references may be combined, which applicants do not admit) address the differences between the subject matter of independent claim 1 and the claims of '477.

### Summary

Applicants respectfully submit that claims 2 – 9 are not subject to the above-discussed provisional rejection for at least the same reasons as presented with respect to independent claim 1. Applicants respectfully submit that the subject matter of independent claim 1, and all claims depending therefrom, is neither taught nor

suggested by any of '477, Batschi, Rohrseitz, Niederdrank, or Vroenhoven, taken either alone or in combination (assuming the references may be combined, which applicants do not admit). Applicants therefore respectfully request reconsideration and withdrawal of this provisional rejection.

### **Rejections under 35 U.S.C. §103(a)**

Claims 1, 2, 4, 5, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bartschi in view of Rohrseitz. Insofar as it pertains to the presently pending claims, this rejection is respectfully traversed.

### **Prior Art**

Bartschi teaches a miniaturized receiver for an in-ear wireless communication unit. Specifically, Bartschi teaches using a single integrated circuit for most of the communication signal processing, thereby reducing the size and power requirements of the device (Col. 2, lines 33 – 68).

Rohrseitz teaches a transmission / reception unit attached to a hearing aid such that the hearing aid may be wirelessly programmed. Specifically, Rohrseitz teaches that such a transmission / reception unit may be disposed in a battery compartment of a hearing aid (Para. 0009).

Claim 1

As amended, independent claim 1 pertains to an in-ear communication device that includes "a transmission and reception circuit for transmission and/or reception of electromagnetic energy, the transmission and reception circuit including an antenna for radiating and/or receiving electromagnetic energy, the antenna being disposed in relation to the battery such that the antenna has a first surface facing away from the battery and a second surface facing towards the battery, the antenna and battery further being situated in close proximity to each other such that the battery is an electromagnetic shield between the antenna and other parts of the communication device circuitry, thereby preventing the antenna from becoming de-tuned as a result of variations in the position of the other circuitry in the device."

Applicants respectfully submit that a discussion of the positional or electromagnetic relationship between a battery and an antenna in a context similar to independent claim 1 is wholly missing from Bartschi. Applicants further respectfully submit that insofar as Rohrseitz teaches or suggests a transmission / reception circuit disposed in a battery compartment of a hearing aid, Rohrseitz does not discuss the location of the antenna for such a circuit in relation to the battery nor suggest that there is any interaction between the battery and the antenna. Applicants therefore respectfully submit that neither Bartschi nor Rohrseitz, taken alone or in combination (assuming the references may be combined, which Applicants do not admit) teach or suggest locating an antenna in relation to a battery in a communication device "such

that the battery is an electromagnetic shield between the antenna and other parts of the communication device circuitry, thereby preventing the antenna from becoming de-tuned as a result of variations in the position of the other circuitry in the device."

### Claims 2, 4, 5, and 7

Applicants respectfully submit that claims 2, 4, 5, and 7 are allowable at least by virtue of their dependency from independent claim 1.

### Summary

At least for the reasons stated above, Applicants respectfully submit that neither Bartschi nor Rohrseitz, taken either alone or in combination (assuming the references may be combined, which Applicants do not admit) teach or suggest all the limitations of independent claim 1 and all claims depending therefrom. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### Rejections under 35 U.S.C. §103(a) – Dependent Claims

Claims 3 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bartschi and Rohrseitz in view of Niederdrank. Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bartschi and Rohrseitz in view of Vroenhoven. Insofar as they pertain to the presently pending claims, these rejections are respectfully traversed.

Applicants respectfully submit that claims 3, 6, and 8 are allowable at least by virtue of their dependency from independent claim 1. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### **New Claims**

Applicants respectfully submit that claims 9 – 18 are allowable for at least the same reasons as set forth with respect to independent claim 1.

### **Conclusion**

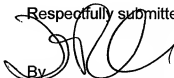
Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but to merely show the state of the art, no comment need be made with respect thereto.

In view of the above amendment, applicant believes the pending application is in condition for allowance. Thus, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

However, should the Examiner believe that any outstanding matters remain in the present application, the Examiner is requested to contact Applicants' representative, Naphtali Mattis (Reg. No. 61,592) at the telephone number of the undersigned in order to discuss the application and expedite prosecution.

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Respectfully submitted,



By \_\_\_\_\_  
D. Richard Anderson  
Registration No.: 40,439  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Rd  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicants